IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

OSA NO. 17 Of 1999.
Reserved on : 8/12/2006.
Date of decision: 29h December, 2006.

H.P. State Forest Corporation Ltd and another. ……. Appellants.

Vs.

Ram Singh. ……. Respondents.

Coram

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting?

For the appellants: Mr. Neel Kamal Sood, Advocate.

For the respondent: Mr. R.K. Sharma, Advocate.

Surinder Singh, J :

1. The appellants herein, have filed the instant original side appeal, having felt aggrieved and dissatisfied by the judgment and decree passed by the Learned Single Judge in Civil Suit No.20 of 1990 dated 5th June, 1998, whereby their suit was dismissed.

2. In nut shell, the case of the appellants have been that pursuant to the agreement dated 28.9.1985 with respect to Lot No.1/83-85 UR and Lot No.4/84-86 Upper Ravi, 29209 scants equivalent to 2588.847 cubic meters were delivered to the respondent for transportation, through the river- floating, which was required to be delivered back to the appellants on the road side staking depot at Dunali. The complete work of launching, stacking and carriage etc. was required to be completed by 31st March, 1986. In case of any loss, the allowance was given to the extent of 2 per cent and any loss over and above was required to be made good by the

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Whether reporters of local Papers may be allowed to see the judgment?

respondent at the rate of Rs.2500/- with respect to Deodar, Rs.2400/- for Kail and Rs.2100/- for fair/spruce trees or at the market value, whichever was higher. It is alleged that against the aforesaid quantity delivered to the respondent only 27,722 scants equivalent to 2154.262 cubic meters were delivered back at launching depots. Thus, there has been a short fall of 434.585 cubic meters in volume and the loss was 16.79% of the total timber entrusted to the respondent, after deducting 2% permissible loss, the respondent was liable for 14.79 % loss of timber at the prevalent market rate which was assessed to the tune of Rs.8,11,152/- and claimed interest at the rate of 18% per annum w.e.f. 1.4.1986 to 31.12.1989 which comes to Rs.5,48,280/- plus claimed Rs.1,13,157/- which was allegedly paid in excess, to the respondent for the work done. Hence, the appellants prayed for a decree to the tune of Rs.14,72,957/- against the respondent

3. The respondent had resisted and contested the suit and alleged that he was only a labour-mate for execution of the said work, therefore, not liable to make good the loss, if any occurred during the transit. For any negligence, the appellants could have imposed a fine to the tune of Rs.1,000/- only. The respondent had denied having delivered 29209 scants of timber for the purpose of transporting by Khad floating as aforesaid. Further in his reply, it was averred that only estimated number of timber was handed over to him. The floating of the timber was made under the supervision of the appellants and some loss, was due to natural calamities, not attributable to the respondent. Further the validity of the agreement aforesaid was assailed by him and took up the point of limitation. Hence, prayed for dismissal of the suit.

4. On the pleadings of the parties, following issues were struck by the learned Single Judge to resolve the controversy:

1. Whether the suit is within limitation? OPP.

2. Whether only an estimated number of scants, and not the exact number, were put in Ghal for floating by the defendant as alleged? If so, its effect? OPD.

3. Whether the defendant was a Mate and his job was only to supply labour and he was not liable for any loss of timber as alleged? If so, its effect ? OPD.

4. Whether there was no valid agreement between the parties? OPD

5.To what amount the plaintiffs are entitled to recover from the defendant ? OPP.

5-A. Whether the loss of timber was due to flood and other natural calamity, as alleged, if so, to what effect? OPD.

6. Relief.

5. The parties led their evidence and upon going through the record and hearing the learned counsel for the parties, the learned Single Judge held that the agreement Ext. PW1/5 was legal and valid, it was also held that the respondent was not a mate for the supply of labourer, as alleged by him and that the timber handed over to the respondent at the time of launching was never measured in the presence of the respondent. Thus, there was no short fall in the timber and if assumed there was any short fall in the timber delivered back to the appellants by the respondent at Dunali, he could not be held liable for the same and it was attributable to the natural calamities. The learned Single Judge decided Issue of limitation against the appellants, consequently, on the above findings, suit of the appellants was dismissed.

6. The appellants have assailed the impugned judgment and decree passed by the learned Single Judge, and filed the instant appeal on the grounds that the judgment and decree are against the law and facts, thus liable to be set-aside and further that the evidence of the appellants was not appreciated in the right perspective, therefore, issue wise findings were incorrect. Further that the respondent did not lead the cogent

evidence to prove the issues, the onus of which was on him, therefore, learned Single Judge could not have given the finding against the appellants.

7. We have heard the learned counsel for the parties carefully and have gone through the evidence on record on all the details.

8. It is vehemently argued by Shri Neel Kamal Sood, learned counsel for the appellants that the agreement dated 28.9.1985 executed inter se the parties stands proved and the appellants have been able to prove the delivery of 29209 scants as against 27722 scants of different species delivered back to the appellants. Thus there was a loss to the tune of 14.79% after giving 2% discount to the respondent, which was properly calculated by the appellants as per Ext.PW4/A. The notice Ext.PW4/C dated 5.10.1989 was sent to the respondent for the repayment of the amount of Rs.13,22,998/- which was not paid, thus the suit was filed within time. Further, the learned counsel had also taken us during the evidence on record and urged that the issue wise findings arrived at by the learned Single Judge are contrary to the evidence on record. Thus, prayed for acceptance of the appeal.

9. Contra, Shri R.K. Sharma, learned counsel for the respondent, while supporting the issue wise findings arrived at by the learned Single judge, argued that there was no illegality in the appreciation of the evidence and the learned Single Judge has come to the right conclusion on the material on record, therefore, prayed for dismissal of the appeal.

10. We have given our thoughtful consideration to the rival contentions. For the appreciation of points taken up by the learned counsel for the appellants it shall be relevant to refer the evidence of the parties in brief, wherever necessary.

11. As a matter of fact, the appellants have examined PW1 Dharam Singh Saini, who remained posted as Divisional Manager of the appellants, PW2 Govind Chand (Office Manager at the relevant time), PW3 Prahalad Singh (Assistant Manager) and PW4 Shri P.L. Thakur (Divisional Manager). On the other hand, the defendant examined himself as DW1 and produced Ram Singh (DW2) and Chhangru Ram (DW3) who were his labourers. The appellants also examined PW5 Shri S.K.Sharma, Divisional Manager in rebuttal.

12. The learned Single Judge on the appreciation of the evidence found that the agreement Ext PW1/5 inter se the parties was valid, therefore, he decided issue No.4 in favour of the appellants and against the respondent which has not been assailed by the respondent. So, the findings on this issue have become final. As far as issues No.2 and 5-A are concerned, it deals with the question whether the respondent was entrusted with the estimated or exact number of scants as alleged by the appellants and whether the appellants are entitled for the recovery of any amount from the respondent for the alleged short fall, learned Single Judge on both these issues being co-related and inter connected, gave his findings against the appellants, which have been assailed in appeal.

13. As already stated above, the case of the appellants was that they delivered 29209 scants of different sizes and species to the respondent which were equivalent to 2588.847 cubic meters in volume, in respect of lot in question for the purpose of floating and carriage for being delivered at the road side depot at Dunali, but he delivered the less scants in volume as already stated above and were entitled to the recovery for the short fall. To appreciate the contention we may look at the evidence led by the parties. The document Ext. PW1/1 reveals that the approximate quantity of timber in cubic meters was required to be floated. Even the

agreement dated 28.9.1985 does not show the exact number of the timber to be floated. However, PW3 has deposed that vide launching list Ex.PW-3/A he had delivered 29000 scants in respect of both the Ghals for the purpose of launching in the river and a separate receipt Ex.PW-3/B for launching of 7976 scants qua lot No.4/84-86 was also obtained from the respondent**.** By adding both, the total comes to 36976 scants (29000 +7976), whereas report Ex.PW-4/B says 29209 scants were floated**.** PW-4 Sh. P L Thakur has stated that 29207 scants equivalent to 2588.847 cubic meters were delivered to the respondent but in his cross-examination he has exhibited his ignorance as to how many scants and volume were in fact floated, as he remained posted there with effect from 1988 to May 1990 i.e. even much after the completion of work, whereas it has been a specific case of the appellants that they had delivered 29,209 scants to the respondents. Thus there is no consistency in their evidence. On the other hand the respondent has pleaded from the very beginning that only the estimated quantity of timber was handed over to him which he also testified it on oath. Further it is admitted that the number of the timber handed back was more but not measured. The perusal of the list Ext.PW4/A, allegedly prepared at the end point i.e. at the stacking place at Dunali Depot does not show who had prepared it whether any measurement was done and when it was prepared. There is no explanation to these except that the timber of another lot got mixed up with it, which is not made out from the said document or any evidence on record. Therefore, on the evidence aforesaid, we conclude that only an estimated quantity and volume was delivered to the respondent for its launching in the river. The loss is said to have been based upon the report Ext.PW1/4 of Assistant Manager, which is a copy of telegram dated 30.8.1985 vide which Ram Singh was informed to arrange the labour as

his tender was accepted. The report is Ex.PW 4/B whereby D. M. had assessed the loss and in his recommendations dated 31.7.89 clearly stated that some scants had been washed away in flood as it was not stacked above high flood level. In fact the timber was required to be delivered back by 31.3.86 it is not understood how and on what basis Ex.PW-4/B was prepared on 31.7.89 after about 3 years . Even there is no basis to prepare the extract of loss Ex.PW-4/A by which the liability is being fastened on the respondent.

14. Therefore, in our considered opinion, on this evidence, it is not possible to come to a positive conclusion even by preponderance of probabilities that there has been any short fall in the timber as alleged, by the appellants contrary. The documents ExPW-4/B and PW-3 and PW-1 have categorically shown and stated that within the period of six months of the contract period, there was a flood and it was also admitted by some witnesses that due to such flood some timber had flown out of the boom, fixed by the department and it was their responsibility to retrieve it and it also stands admitted on record that some of the timber extracted from the rotten trees normally sink in the water. Thus after analyzing the evidence on the above issues, we have come to conclusion firstly, that the estimated number of scants were delivered without measuring to the respondent in turn he had delivered back more scants which were not measured. Secondly, the assessment in volume is also based upon estimation. However, in any case, if there was any loss, it was attributable to the natural calamities like floods etc. For which the agreement Exdt.PW1/5 does not saddle the respondent with any liability. Hence, in our opinion, the appellants have failed to prove the above material issues, on the basis of which the main claim of the appellants was based. Thirdly, besides this, we are also constrained to hold that the suit was also

not filed within limitation. As the agreement Ex.PW 1/5 contained the stipulation to complete the work by 31.3.1986 and there was no allegation that the work even continued thereafter and respondent had committed the breach in completing the agreement. The delivery of the scants were required to be made at the stacking depots at Dunali on the due date however, if there was any short fall in the delivery of the scants back to the appellants as alleged, in that event the cause of action had accrued to the appellants on 1.4.1986 whereas, the present suit was filed on 23.1.1990 after the expiry of the three years. Therefore, we hold that the suit was barred by limitation.

15. On reappraising the evidence, we affirm the issue wise findings arrived at by the learned Single Judge, as we did not find any anything worth interference, therefore, the appeal merits dismissal, accordingly, the appeal is dismissed with costs throughout.

(Deepak Gupta)
Judge

December 29th, 2006.
(Pds)

(Surinder Singh)
Judge.